

225893



October 19, 2009

**Via UPS Overnight**

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

ENTERED  
Office of Proceedings  
OCT 20 2009  
Part of  
Public Record



**RE: STB Finance Docket No. 35220—Union Pacific Railroad Company, Iowa Interstate Railroad Ltd., Red Giant Oil Company, Midwest Walnut Company of Iowa—Rationalization of Service in Council Bluffs, Iowa**

Dear Secretary Quinlan:

Attached is a Petition for Exemption, jointly filed by Union Pacific Railroad Company ("UP"), Iowa Interstate Railroad Ltd. ("IAIS"), Red Giant Oil Company, and Midwest Walnut Company of Iowa in the above-referenced matter. Enclosed are an original, ten copies, and an electronic (CD-ROM) copy of the Petition. Also attached is a Payment Form for the \$6,700 filing fee. The parties respectfully request expedited consideration of this matter.

UP and IAIS certify that as of this date UP and IAIS have complied with the advance notice requirements for a rail line transaction as prescribed by 49 CFR §1121.4(h). As set forth in Exhibit 4 of the Petition for Exemption, notice of the proposed transaction, conforming with the provisions of 49 CFR §1121.4(h) has been: (1) served upon the national offices of the labor unions with employees on the affected lines, and (2) posted at the workplaces of employees on the affected lines.

Thank you very much for your time and consideration. Please do not hesitate to contact me if you have any questions.

Sincerely,

*Raymond J. Hasiak*  
Raymond J. Hasiak *by D. McManis*

Attachments

Law Department

UNION PACIFIC RAILROAD  
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580  
fx (402) 501-0127

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35220

UNION PACIFIC RAILROAD COMPANY,  
IOWA INTERSTATE RAILROAD, LTD.,  
RED GIANT OIL COMPANY,  
AND  
MIDWEST WALNUT COMPANY OF IOWA



-- EXEMPTION --

RATIONALIZATION OF SERVICE IN COUNCIL BLUFFS, IOWA

**FILED**

OCT 20 2009

PETITION FOR EXEMPTION

ENTERED  
Office of Proceedings

SURFACE  
TRANSPORTATION BOARD

*Contains Color Images*

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Public Record

UNION PACIFIC RAILROAD CO.  
Raymond J. Hasiak  
Senior Trial Counsel  
1400 Douglas Street, Mail Stop 1580  
Omaha, Nebraska 68179  
(402) 544-3052  
(402) 501-0127 FAX

IOWA INTERSTATE RAILROAD, LTD.  
Lanny M. Van Daele  
Corporate Counsel  
Iowa Interstate Railroad, Ltd.  
5900 6th St. S.W.  
Cedar Rapids, IA 52404  
319-298-5405  
319-298-5456 FAX

RED GIANT OIL COMPANY  
William Hughes, Esq.  
Stuart Tinley Law Firm, LLP  
Qwest Building  
310 W. Kanesville Blvd., 2<sup>nd</sup> Floor  
P.O. Box 398  
Council Bluffs, IA 51502-0398  
(712) 322-4033

MIDWEST WALNUT COMPANY OF IOWA  
Steve Woolley, Esq.  
McGill, Gotsdiner, Workman & Lepp,  
P.C., L.L.O.  
11404 W. Dodge Road, Suite 500  
Omaha, NE 68154-2584  
(402) 492 -9200  
(402) 492-9222 FAX

Dated: October 19, 2009  
Filed: October 20, 2009

**FEE RECEIVED**

OCT 20 2009

SURFACE  
TRANSPORTATION BOARD



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 35220**

**UNION PACIFIC RAILROAD COMPANY,  
IOWA INTERSTATE RAILROAD, LTD.,  
RED GIANT OIL COMPANY,  
AND  
MIDWEST WALNUT COMPANY OF IOWA**

**-- EXEMPTION --**

**RATIONALIZATION OF SERVICE IN COUNCIL BLUFFS, IOWA**

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**PETITION FOR EXEMPTION**

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**I. SUMMARY AND BACKGROUND**

Pursuant to 49 U.S.C. § 10502, Union Pacific Railroad Company ("UP"), a Class I carrier, Iowa Interstate Railroad, Ltd. ("IAIS"), a Class II carrier, Red Giant Oil Company ("Red Giant"), and Midwest Walnut Company of Iowa ("Midwest Walnut") collectively file this Petition for Exemption from the requirements of 49 U.S.C. Sections 10902 and 10903, and any other applicable regulatory requirements to allow IAIS to acquire UP's operating rights (currently unused) and the full common carrier obligation with respect to: 1) UP's Great Western Industrial Lead from Milepost 503.6 to Milepost 504.05, a distance of 0.45 miles (the "UP Line"), and 2) an associated connecting track ("Connecting Track").<sup>1</sup> Both track segments are depicted in the map attached as

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<sup>1</sup> The Connecting Track, which is approximately 900 feet long, connects the UP Line to IAIS' Main Line (the "IAIS Line"). The Connecting Track, which has been made available for use by both UP and IAIS,

## **Exhibit 1.**

The proposed transaction involves trackage that was the subject of a petition for exemption in STB Docket Nos. AB-33 (Sub-No. 274X) and AB-414 (Sub-No. 4X), which UP and IAIS jointly filed in August 2008. The transaction in that proceeding contemplated that: 1) UP would abandon the UP Line, reclassify it as 49 C.F.R. § 10906 spur track, and sell it to Red Giant, which is one of two shippers located on the line; 2) IAIS would “discontinue service” on the UP Line, but would actually continue to serve it as a shipper spur track; and 3) UP would discontinue overhead trackage rights over IAIS’ Main Line from Milepost 486.8 to Milepost 488.0, a distance of 1.2 miles (the “IAIS Line”). In a December 12, 2008 decision, the Board denied the August 2008 Petition, primarily due to concerns regarding its effect on the carriers’ obligations to provide service to Red Giant and Midwest Walnut, which are the sole shippers on UP Line.

As explained in greater detail below, UP and IAIS have restructured the proposed transaction to address the concerns the Board expressed in its December 12 decision. Pursuant to this Petition, which Red Giant and Midwest Walnut join, neither UP nor IAIS will abandon or reclassify any trackage. Instead, IAIS now proposes to acquire all UP operating rights and the full common carrier obligation with respect to the UP Line and the Connecting Track. No trackage will be abandoned, and IAIS will continue to serve the UP Line and the Connecting Track as a common carrier. UP has

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can only be accessed via the IAIS Main Line (on which UP has overhead trackage rights). The UP Line is not connected to the rest of the UP rail network via UP trackage, and can only be accessed via the IAIS Line and the Connecting Track. As a result, pursuant to this transaction, IAIS will assume a common carrier obligation with respect to the Connecting Track, in addition to a common carrier obligation for the UP Line. See *Central Oregon & Pacific Railroad, Inc.—Abandonment and Discontinuance of Service—In Coos, Douglas, and Lane Counties, OR*, STB Docket No. AB-515 (Sub-No. 2), STB served Oct. 31, 2008, at 12 (“It is well settled that so long as there is a common carrier obligation attached to a particular segment of track, the Board will not allow that segment to become isolated from the rail system as a result of the abandonment of the adjoining segment.”).

not conducted operations on the UP Line or the Connecting Track in more than two years, and does not anticipate that there will be any reason for UP to provide any future service on this trackage.<sup>2</sup>

The proposed transaction will have no effect on service to any shipper, including Red Giant and Midwest Walnut, who join in this Petition. While Red Giant will acquire the UP Line's right-of-way and track from UP as part of the proposed transaction, simultaneously with the closing of this acquisition, IAIS will acquire rights from Red Giant sufficient to permit IAIS to perform common carrier operations over the UP Line in perpetuity, or until IAIS obtains lawful abandonment authority from the STB or successor regulatory agency. (See draft Industrial Track Agreement attached as **Exhibit 2.**)

Additionally, following the transaction, Red Giant will have ownership and control over the track and right-of-way associated with the Connecting Track and will grant IAIS rights sufficient to permit IAIS to perform common carrier operations over the Connecting Track in perpetuity, or until IAIS obtains lawful abandonment authority from the STB or successor regulatory agency. (See **Exhibit 2.**) As a result, a common carrier obligation with respect to both the UP Line and the Connecting Track will be held by a railroad at all times and the proposed transaction will have no effect on service to any shippers, including Red Giant and Midwest Walnut, or their rights to service. Any future abandonment or cessation of service on the UP Line or Connecting Track will require IAIS to first obtain lawful abandonment authority.

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<sup>2</sup> Because IAIS will assume the full common carrier obligation with respect to the UP Line and Connecting Track, UP will have no future need for trackage rights on the IAIS Line, which it has used solely for the purpose of accessing the UP Line and the Connecting Track. UP will seek Board authority to discontinue its overhead trackage rights on the IAIS Line in a separately-filed notice of exemption.

## **II. THE PROPOSED TRANSACTION**

The proposed transaction involves two segments of track in Council Bluffs, Pottawattamie County, Iowa: 1) the UP Line, which extends from Milepost 503.6 to Milepost 504.05; and 2) the Connecting Track, which extends approximately 900 feet between the UP Line and the IAIS Line. (See map, attached as **Exhibit 1.**)

IAIS seeks Board authority to acquire all UP operating rights and the full common carrier obligation with respect to the UP Line and the Connecting Track.<sup>3</sup> Approval of the transaction will enable Red Giant to acquire UP's interests in the UP Line and Connecting Track, and will allow UP to formally discontinue operations over the UP Line and the Connecting Track, neither of which it has served in more than two years. Concurrently with Red Giant's acquisition of the UP Line and Connecting Track, Red Giant will grant IAIS rights sufficient for IAIS to conduct common carrier operations on both the UP Line and the Connecting Track, as provided in the Industrial Track agreement attached as **Exhibit 2.** As a result, a common carrier obligation with respect to the UP Line and Connecting Track will be held by a railroad at all times and the proposed transaction will have no effect on service to any shippers or their rights to continued service. The UP Line and the Connecting Track will remain subject to the Board's jurisdiction.

### **A. The UP Line**

The UP Line was formerly a part of the Chicago Great Western Railway ("CGW")

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<sup>3</sup> Since IAIS will acquire all operating rights for the UP Line, UP will cancel IAIS' local trackage rights over the UP Line. If left in effect, such rights would essentially give IAIS trackage rights over its own railroad. Petitioners do not believe any regulatory authorization is necessary for this cancellation as it will not result in any discontinuance of IAIS service. However, should the Board believe that discontinuance authority is required for this cancellation, Petitioners respectfully request that any exemption issued in this proceeding extend to it.

main line between Council Bluffs and Fort Dodge, IA. Most of the CGW main line was abandoned after Chicago and North Western Railway ("CNW") acquired CGW in 1968, including much of the line in the Council Bluffs area. CNW abandoned the portion of the former CGW line to the immediate south and east of the UP Line in 1971. (See ICC Finance Docket No. 26081.) Additionally, in 2000, UP abandoned a portion of the former CGW line to the immediate north and west of the UP Line, as part of a joint relocation project authorized in STB Finance Docket No. 33883, *Iowa Interstate Railroad, Ltd. and Union Pacific Railroad Co.—Exemption—Joint Relocation Project in Council Bluffs, Pottawattamie County, IA* (served June 12, 2000). Both abandonments are identified on the map attached as **Exhibit 3**. As part of the 2000 transaction, UP obtained overhead trackage rights on the IAIS Line to access the UP Line, and IAIS obtained local trackage rights, allowing both carriers to provide direct service to shippers on the UP Line. UP also built the Connecting Track between the IAIS line and UP Line.

Since the 2000 relocation, all rail traffic moving to and from the UP Line has moved via the IAIS Line and the Connecting Track. While UP has the right to directly serve shippers on the UP Line, it has not done so for more than two years, and does not anticipate that there will be any future need for UP service on the UP Line. Instead, IAIS has been the sole rail service provider on the UP Line, both as a switch carrier for UP traffic and as a line haul carrier for its own traffic.

Once the transaction is completed, IAIS will have the entire common carrier obligation for the UP Line. Red Giant, as owner of the UP Line, will become responsible for its maintenance and upkeep, although IAIS will have the right to maintain the Line in



the event that Red Giant fails to fulfill its maintenance obligations. (See Section 2 of the Industrial Track Agreement, attached as **Exhibit 2.**)

**B. The Connecting Track**

The Connecting Track was constructed in 2000, in conjunction with UP's abandonment of the portion of the former CGW line to the immediate north and west of the UP Line. The Connecting Track provides a rail link between the IAIS Line and the UP Line.

Once the transaction is completed, IAIS will have the entire common carrier obligation for the Connecting Track and will operate over it pursuant to the terms of the Industrial Track Agreement (see **Exhibit 2**) with Red Giant, which shall be sufficient to permit common carrier obligations. As with the UP Line, Red Giant will become responsible for maintenance and upkeep of the Connecting Track, and IAIS will have the right to maintain it in the event that Red Giant fails to fulfill its maintenance obligations. (See Section 2 of the Industrial Track Agreement, attached as **Exhibit 2.**)

**C. Applicant Information**

UP is a Class I rail carrier with rail operations in the states of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming. The name, address and telephone number of UP's representative is listed below:

Raymond J. Hasiak  
Senior Trial Counsel  
1400 Douglas Street, Mail Stop 1580  
Omaha, Nebraska 68179  
(402) 544-3052  
(402) 501-0127 FAX

IAIS is a Class II rail carrier with rail operations in the states of Illinois and Iowa.

The name, address and telephone number of IAIS' representative is listed below:

Lanny M. Van Daele  
Corporate Counsel  
Iowa Interstate Railroad, Ltd.  
5900 6th St. S.W.  
Cedar Rapids, IA 52404  
319-298-5405  
319-298-5456 FAX

Red Giant is an independent supplier of industrial lubricants and a producer of locomotion and specialized engine oils. Red Giant's shipping profile is as follows:

Red Giant Oil Company  
1701 South 3rd Street  
Council Bluffs, IA 51503

The name, address, and telephone number of Red Giant's representative is listed below:

William Hughes, Esq.  
Stuart Tinley Law Firm, LLP  
Qwest Building  
310 W. Janesville Blvd., 2nd Floor  
P.O. Box 398  
Council Bluffs, IA 51502-0398  
(712) 322-4033

Midwest Walnut is a manufacturer of wood products made from walnut trees.

Midwest Walnut's shipping profile is as follows:

Midwest Walnut Company of Iowa

1914 Tostevin  
Council Bluffs, Iowa 51503

The name, address, and telephone number of Midwest Walnut's representative is listed below:

Steve Woolley, Esq.  
McGill, Gotsdiner, Workman & Lepp, P.C., L.L.O.  
11404 W. Dodge Road, Suite 500  
Omaha, NE 68154-2584  
(402) 492 -9200  
(402) 492-9222 FAX

Red Giant and Midwest Walnut are the only shippers located on the UP Line and Connecting Track. Neither shipper will be impacted by the proposed transaction, and both support it. If the Board authorizes the transaction, IAIS will continue to operate as a common carrier on the UP Line and the Connecting Track, serving Red Giant and Midwest Walnut.

As established in the draft Industrial Track Agreement (**Exhibit 2**), Red Giant will grant rights to IAIS, allowing IAIS to conduct continued rail operations as a common carrier over the UP Line and the Connecting Track. IAIS will continue common carrier operations over these lines unless or until it obtains lawful abandonment authority from the STB or successor regulatory agency. IAIS and Red Giant will execute the Industrial Track Agreement concurrently with UP's transfer of its property to Red Giant. The Industrial Track Agreement will allow IAIS to serve the UP Line and Connecting Track without restriction, thereby enabling IAIS to fulfill all common carrier obligations with respect to these lines.

### **III. THE TRANSACTION MEETS THE EXEMPTION STANDARDS OF § 10502**

In the absence of an exemption, IAIS' acquisition of operating rights and the full common carrier obligation with respect to the UP Line would require Board authorization under 49 U.S.C. Sections 10902 and 10903. However, 49 U.S.C. § 10502 requires the Board to exempt transactions where it finds: 1) continued regulation is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. § 10101; and 2) either the transaction is of limited scope or Board regulation is not necessary to protect shippers from an abuse of market power. The proposed transaction clearly satisfies these exemption standards.

Detailed scrutiny by the Board under 49 U.S.C. Sections 10902 and 10903 is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. § 10101. An exemption will minimize UP's and IAIS' administrative costs and expenses that would otherwise be associated with pursuing the proposed actions through a full application proceeding. An exemption will expedite regulatory action and will reduce regulatory barriers to discontinuances, consistent with Sections 10101(2) and (7). An exemption will also foster sound economic conditions in the transportation industry, consistent with Section 10101(5), by allowing UP to conclude the pending sale of the UP Line's right-of-way and track to Red Giant without undue delay.

The proposed transaction is clearly limited in scope. The combined length of the UP Line and Connecting Track, which IAIS will acquire a sole obligation to operate as a common carrier is approximately 0.60 miles, and the lines serve only two customers—Red Giant and Midwest Walnut—neither of whom will experience any change in rail service.

Since the acquisition and discontinuance proposed as part of the transaction

qualify for exemption under the limited scope criteria, the Board need not address abuse of market power. However, regulation of the transaction is also unnecessary to protect shippers from an abuse of market power. As discussed above, IAIS is currently the only rail carrier that serves the UP Line and the Connecting Track. The transaction involves no changes in its service. UP does not serve either line, and does not anticipate serving them in the future. In effect, the transaction simply reflects the status quo from the standpoint of operations and service—UP's dormant operating rights will be extinguished and IAIS will act as a common carrier, continuing to provide any needed service on the UP Line and the Connecting Track, as it does today.

Additionally, Red Giant and Midwest Walnut will retain other rail and non-rail transportation alternatives. The UP Line and the Connecting Track lie in the City of Council Bluffs, which is served by numerous local streets and interstate highways, other UP and IAIS lines, as well as lines of other railroads, including BNSF Railway Co. and Canadian National Railway Co. For these reasons, the proposed transaction cannot result in an abuse of market power because it will have no effect on the market power of UP and IAIS.

#### **IV. OTHER INFORMATION**

##### **A. Additional Rail Line Information**

Both the UP Line and Connecting Track traverse U.S. Postal Service zip code 51503. There is no passenger service or overhead traffic on the lines. There are two active shippers served by the lines—Red Giant and Midwest Walnut—who both join in this Petition. No stations will close as a result of UP's proposed discontinuance of its

operations over the UP Line and Connecting Track.

A map depicting the UP Line, the Connecting Track, and the IAIS Line is attached as **Exhibit 1**. Other rail lines in the area are also shown on the map, as are principal highways and other roads.

#### **B. Labor**

While UP and IAIS do not anticipate that the proposed transaction will have any labor impact, UP and IAIS agree to the labor protective conditions in *Oregon Short Line R. Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979) and 49 U.S.C. 10902(d).

#### **C. Environmental and Historic Report**

No environmental or historic documentation is required in this matter. Pursuant to 49 C.F.R. § 1105.6(c)(2), no environmental report is required for “[a]ny action that does not result in significant changes in carrier operations.” See also *Union Pacific RR Co.—Discontinuance Exemption—In Oklahoma City, OK*--STB Docket No. AB-33 (Sub-No. 239X), (served April 13, 2006), at 2 (“*Oklahoma City*”). The proposed transaction will not result in changes to any rail operations. UP has not served the UP Line or the Connecting Track in more than two years, and IAIS will continue to provide service and fulfill any common carrier obligations on these lines. Additionally, trackage rights discontinuances do not require submission of an environmental report. 49 CFR § 1105.6(c)(6) provides that no environmental report is required for “[d]iscontinuance of trackage rights where the affected line will continue to be operated.” As discussed above, the UP Line, the Connecting Track, and the IAIS Line will continue to be operated.

Likewise, no historic report is required in this matter, as the proposed transaction

will have no impact upon historic properties. 49 CFR § 1105.8(e); *Oklahoma City* at 3. Additionally, 49 C.F.R. § 1105.8(b)(1) provides that no historic report is required for, "A sale, lease or transfer of a rail line for the purpose of continued rail operations where further STB approval is required to abandon any service and there are no plans to dispose of or alter properties subject to STB jurisdiction that are 50 years old or older."

**D. Alternative or Public Use**

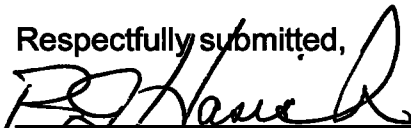
If the Board authorize the proposed transaction, the UP Line, the Connecting Track, and the IAIS Line will remain active rail lines subject to federal regulatory authority, and as such they will not be subject to conversion for public or alternative uses.

**V. CONCLUSION**

WHEREFORE, UP, IAIS, Red Giant, and Midwest Walnut respectfully request that the Board issue a decision exempting the proposed transaction from the provisions of 49 U.S.C. Sections 10902 and 10903 and any other regulatory requirements that would otherwise be applicable.

Dated this 16 day of October, 2009.

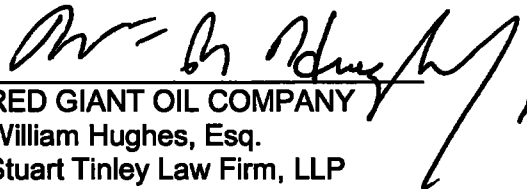
Respectfully submitted,



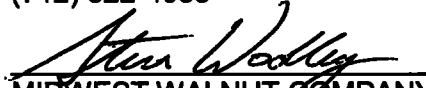
UNION PACIFIC RAILROAD CO.  
Raymond J. Hasiak  
Senior Trial Counsel  
1400 Douglas Street, Mail Stop 1580  
Omaha, Nebraska 68179  
(402) 544-3052  
(402) 501-0127 FAX



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Lanny M. Van Daele  
Corporate Counsel  
Iowa Interstate Railroad, Ltd.  
5900 6th St. S.W.  
Cedar Rapids, IA 52404  
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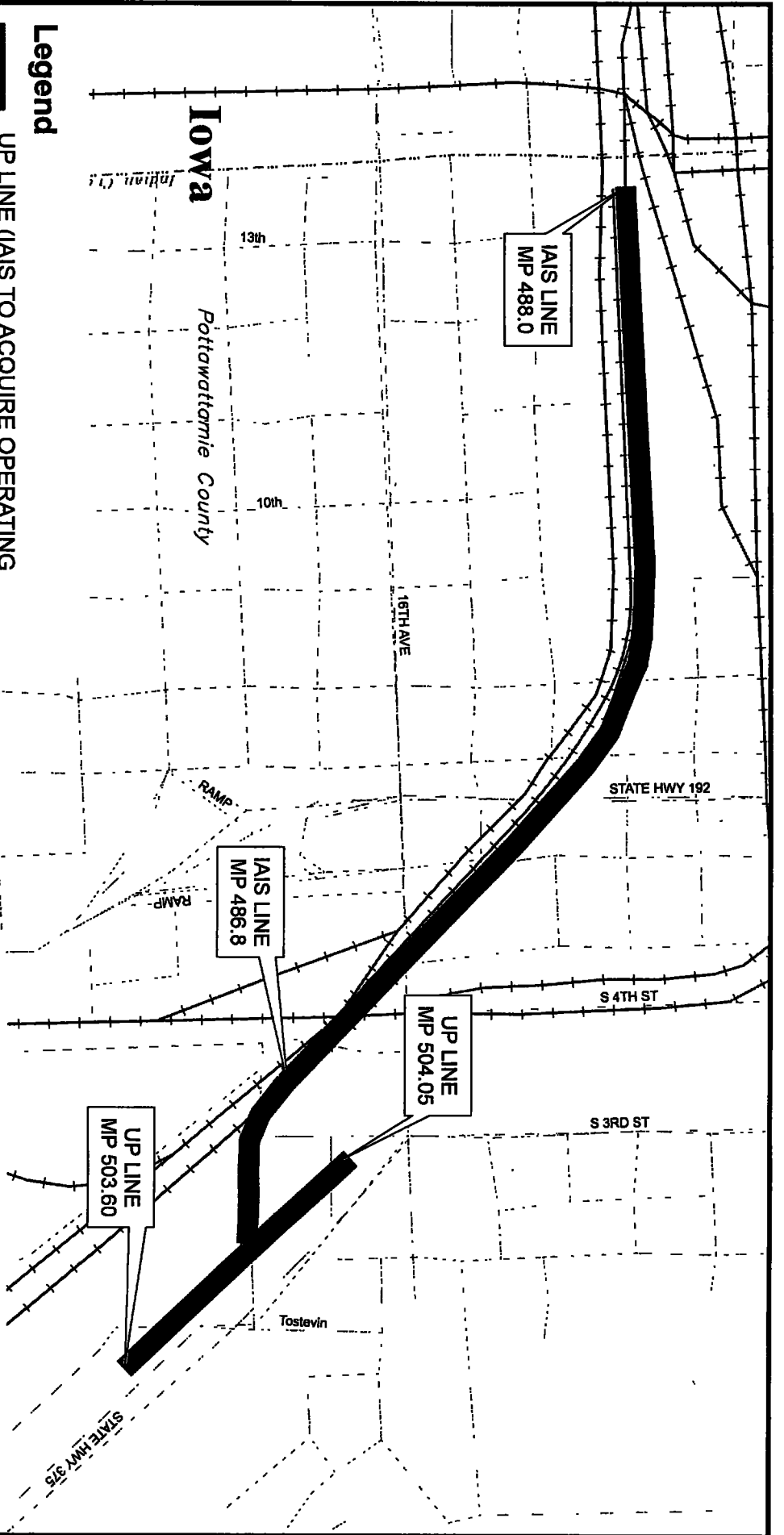


MIDWEST WALNUT COMPANY OF IOWA  
Steve Woolley, Esq.  
McGill, Gotsdiner, Workman & Lepp, P.C.,  
L.L.O.  
11404 W. Dodge Road, Suite 500  
Omaha, NE 68154-2584  
(402) 492-9200  
(402) 492-9222 FAX



11/11/11

- Legend**
- UP LINE (AIS TO ACQUIRE OPERATING RIGHTS AND COMMON CARRIER OBLIGATIONS)
  - IAIS LINE (UP TO DISCONTINUE TRackage RIGHTS)
  - CONNECTING TRACK
  - OTHER RAILROADS
  - PRINCIPAL HIGHWAYS
  - OTHER ROADS



**THE PROPOSED TRANSACTION**

UP LINE -  
MP 503.6 TO MP 504.05  
TOTAL OF 0.45 MILES  
IAIS LINE - MP 486.8 TO 488.0  
TOTAL OF 1.2 MILES  
IN POTTAWATTAMIE COUNTY, IOWA

**UNION PACIFIC RAILROAD CO.  
GREAT WESTERN INDUSTRIAL LEAD  
IOWA**

**IOWA INTERSTATE RAILROAD, LTD.**  
**INDUSTRIAL TRACK AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between IOWA INTERSTATE RAILROAD, LTD. (hereinafter called the "Company") and Red Giant Oil Company, (hereinafter called the "Industry").

WITNESSETH:

WHEREAS, the Industry owns the following two segments of railroad trackage, located in Council Bluffs, IA:

- A. A portion of rail line previously owned by Union Pacific Railroad Company ("UP") and known as the Great Western Industrial Lead, extending between UP Mileposts 503.6 and 504.05, a distance of 0.45 miles; and
- B. An approximately 900-foot-long segment of trackage, which connects the trackage identified in Paragraph A, above, with the Company's Main Line at Milepost 486.8.

This trackage, collectively comprising the "Industry Track," is depicted on the map marked as Exhibit "A," which is attached hereto, and is hereby made a part of this Agreement.

WHEREAS, the Company presently operates and will continue to operate on the Industry Track as a common carrier by rail;

WHEREAS, the Company's operation on the Industry Track is subject to the authority of the United States Surface Transportation Board ("STB") and cannot be abandoned or discontinued without the STB's authority; and

WHEREAS, the Company and the Industry agree that the Industry shall be responsible for the maintenance of the Industry Track, in accordance with the terms and conditions set forth herein.

NOW THEREFORE, in consideration of these premises, it is hereby agreed between the parties hereto as follows:

1. **RIGHT OF WAY AND PUBLIC AUTHORITY AND AUTHORITY AND ASSESSMENTS.** The Industry shall procure and furnish, without expense to the Company, all necessary right of way, including all necessary authority and permission, public or private, for the maintenance and operation of the Industry Track, and shall pay all compensation and assessments required at any time by any municipality, governmental agency, or person for the privilege of maintaining and operating said track, and all special assessments, taxes and the expense of all requirements in connection with any public improvements, levied or made against, upon, or on account of the Industry Track.
2. **MAINTENANCE.** The Industry shall bear and pay the cost and expense of maintenance of the Industry Track. The term "maintenance" as used in this paragraph is intended to and shall include, in addition to repairs, all additions, betterments, and changes to said track, and the removal of snow, ice, weeds, and other obstructions therefrom. The necessity for such maintenance shall be determined by the Company. In the event that the Industry fails to maintain the Industry Track in accordance with its obligations under this Section 2, the Company, and any successor railroad operator, shall have the right to perform track maintenance, and the Industry shall reimburse the Company for any costs or expenses incurred in connection with such track maintenance. In addition, the Company reserves the right to install, maintain, and operate such derails, signals, and other safety devices (wheresoever

located) and to employ such flagmen or other employees, as in its judgement may be necessary for safe operation of said track, or as may be required by public authority, and the Industry agrees to pay to the Company the cost and expense thereof.

3. CHANGES AND ADDITIONS. The Company shall bear and pay the cost and expense of all present and future changes in the Industry Track rendered necessary by changes in other tracks, or in the Company's property, or operating requirements. The Industry shall bear and pay the cost and expense of all other present or future changes in or additions to all tracks and property, regardless of the ownership thereof, and also of all construction, made necessary by the maintenance or operation of the Industry Track of any changes thereon. This paragraph shall apply to electrification, track elevation or depressions, and grade separation, as well as any other repairs, additions, betterments, or changes whatsoever.
4. PAYMENT IN ADVANCE FOR ITEMS TO BE FURNISHED BY THE COMPANY.  
(Not applicable).
5. SERVICE. The Company, which shall operate over the Industry Track as a common carrier, shall deliver and receive all freight in carload lots consigned to or from the Industry and any other shippers located on the Industry Track that now exist, or may come to exist in the future. All such service is to be performed subject to legal requirements and in conformity with rates, rules, and regulations contained in lawfully published tariffs. The Company may not abandon or discontinue operations over the Industrial Track unless the Company obtains lawful abandonment or discontinuance authority with respect to the Industrial Track from the STB or successor agency, and exercises such authority.
6. OBSTRUCTIONS AND CLEARANCES, CHANGES AND OPERATING RULES. The Industry shall not place, or permit to be placed any equipment, material, structure, pole, or other obstruction, or any excavation within 9.0 feet, on straight track or 10.5 feet on curved track, laterally of the center, or within 23 feet vertically from the top of the rail of the Industry Track. The Company's knowledge of any obstruction and the Company's continued operation on said Track shall not constitute a waiver of this covenant. The number of feet of clearance herein specified may be changed by the Company at any time to meet new operating or legal requirements, by giving written notice thereof to the Industry. Within ten (10) days after receipt of such notice, the Industry and Company shall proceed to jointly prepare and file with the applicable government authorities a written application for waiver as to the Industry Track of any such legal requirements. The Industry shall observe and comply with all rules and regulations of the Company concerning the use and operation of the Industry Track and the loading, unloading, and movement of cars thereon.
7. USE OF THE TRACK. The Company shall have the unrestricted right to use the Industry Track, or any extension thereof, for any and all railroad purposes, including those in fulfillment of its common carrier obligation.
8. FIRE INDEMNITY CLAUSE. It is understood that the movement of railroad locomotives involves some risk of fire, and the Industry assumes all responsibility for and agrees to indemnify the Company against loss or damage to property of the Industry or to property upon its premises, arising from fire caused by locomotives operated by the Company on the Industry Track, or in its vicinity for the purpose of serving said Industry.
9. GENERAL INDEMNITY CLAUSE. The Industry agrees to indemnify and hold harmless the Company for loss, damage, or injury from any act or omission of the Industry, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or

property of any other person or corporation, while on or about the Industry Track; and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.

10. ENVIRONMENTAL AND OCCUPATIONAL INDEMNITY CLAUSE. Notwithstanding anything herein to the contrary, Industry agrees that in the maintenance of the Industry Track, it will comply with applicable laws, including, but not limited to, any laws, standards, regulations, or permit requirements relating to environmental pollution or contamination or to occupational health and safety; and Industry agrees to indemnify and hold harmless the Company any and all claims, demands, lawsuits, or liability for loss, fines, damage, injury, and death and all expenses and costs, including attorneys' fees, resulting from or arising out of the maintenance of the Industry Track, including any discharge or emission therefrom or for the violation of any law, standard, regulation, or permit requirement relating to environmental pollution or contamination or to occupational health and safety.
11. END CLEARANCE. In the event any equipment, material, structure, pole, or other article or obstruction shall be placed within fifteen (15) feet of the end of the Industry Track by the Industry, then the Industry hereby assumes all responsibility for and agrees to indemnify the Company against all liability on account of loss or damage to property (except to property of the Company), and injury to or death of any person or persons whatsoever (except employees of the Company), caused by engines, cars, trains, or other equipment running off the end of the Industry Track.
12. TERMINATION. The Company shall have the right, at its option, to terminate this Agreement; PROVIDED, HOWEVER; that termination of this agreement shall not relieve the Company of its common carrier obligation with respect to the Industrial Track. The Company's common carrier obligation shall continue until such time as the Company obtains lawful abandonment or discontinuance authority with respect to the Industrial Track from the STB or successor agency, and it exercises such authority. In the event the Company obtains and exercises lawful abandonment or discontinuance authority, the Company shall have the right, at its option, to discontinue operations over the Industry Track and cease service to the Industry and any other shippers located on the Industrial Track. Thereafter, at any time, at the expense of the Industry, the Company may disconnect the Industry Track and take up and remove all or any part thereof owned by the Company (and may restore any property, upon which same is located, to its former condition).
13. ASSIGNMENT. The Industry may assign this Agreement, or any interest therein, provided that Industry provides prior written notice to the Company. Subject to the above limitation, this Agreement shall be binding upon the respective parties, and their respective heirs, executors, administrators, successors, and assigns.
14. PERFORMANCE. In the event any of the terms or provisions of this Agreement have been carried out or performed prior to the date of execution hereof, it is understood and agreed that this Agreement shall nevertheless be of the same force and effect as though same had been executed by the parties prior to such performance.
15. FORCE MAJEURE. The Company shall not be obligated to operate on the Industry Track if it shall be prevented or hindered from doing so by acts of God, public authority, strikes, riots, labor disputes, or any cause beyond its control.
16. INTEREST OF IOWA INTERSTATE RAILROAD, LTD. This Agreement shall inure to the benefit of and be binding upon (i) the parties hereto, (ii) the successors and assigns of the parties herein, including without limitation, Iowa Interstate Railroad, Ltd. ("IAIS") and IAIS's successors and

assigns, in recognition that IAIS is the owner of the lines of railroad immediately adjacent to the Industry Track, and (iii) the person, firm, partnership, or corporation other than the Company that may be duly designated by IAIS or future owner of the aforesaid lines of railroad and Industry Track as the one (1) sole operator designated to conduct freight operations over the lines of railroad and the Industry Track.

17. GOVERNING LAW AND PERFORMANCE. This Agreement shall be performed by the Industry in the City of Council Bluffs, Pottawattamie County, Iowa. In the event the Industry is non-resident of the State of Iowa, said performance of this Agreement shall be deemed as doing business in Iowa, shall be deemed to constitute the appointment of the Secretary of State of Iowa to be said non-resident's true and lawful attorney upon whom may be served process under Section 617.3 Code of Iowa (1985) and any process or original notice served under said statute shall be of the same legal force and effect as of served personally upon the Industry within the State of Iowa. The parties intend this Agreement to be executed in, and interpreted, construed and enforced in accordance with the laws of the State of Iowa.

18. LEGAL FEES. In case of any action, claim or any proceeding in which a dispute arises concerning this Agreement, the Industry shall pay all reasonable costs and expenses in connection therewith, including reasonable attorney's fees incurred by or billed against the Company.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year herein above stated.

IOWA INTERSTATE RAILROAD, LTD.

By \_\_\_\_\_

Vice President Engineering

ATTEST:

\_\_\_\_\_

Assistant Secretary

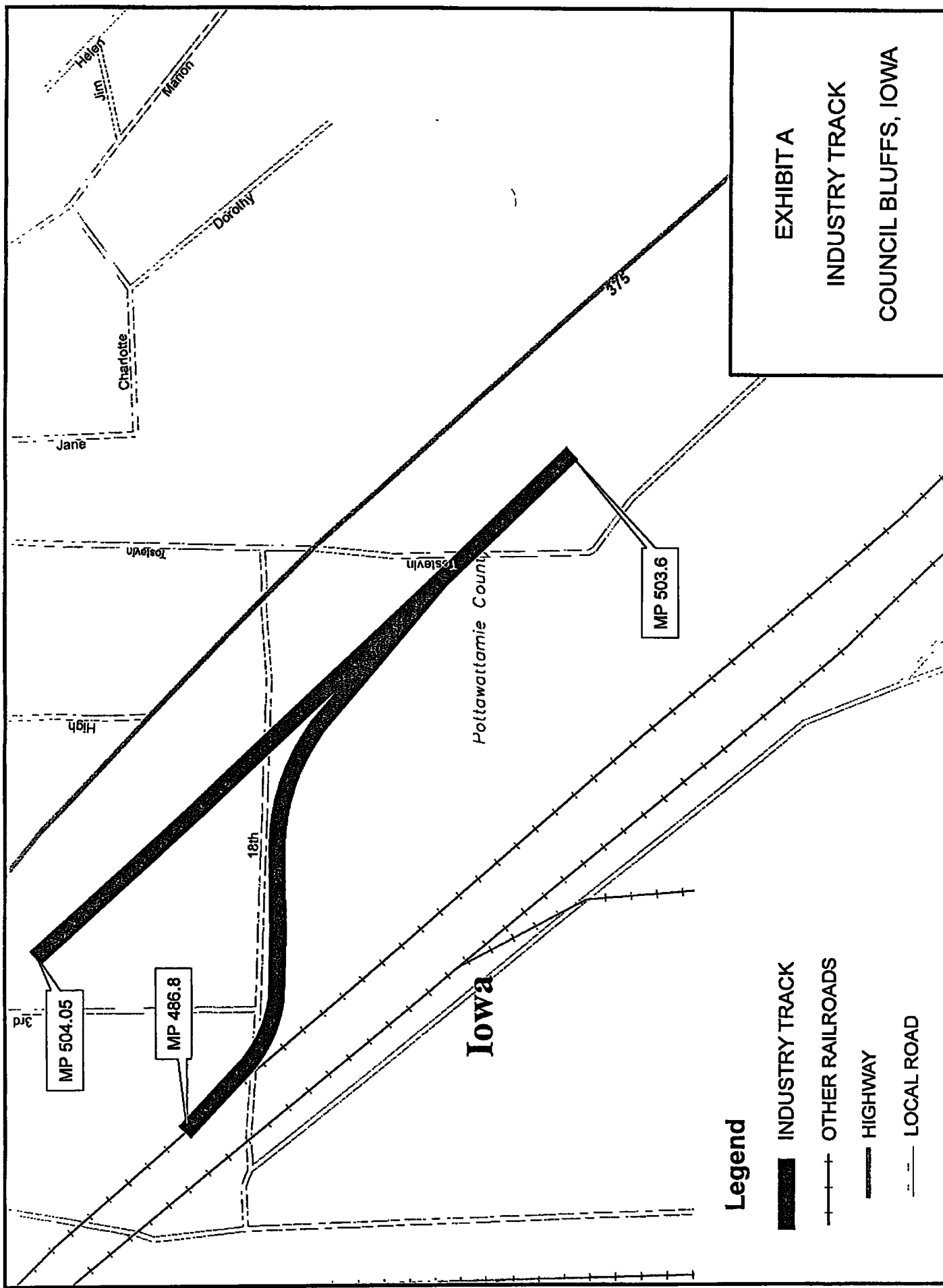
By \_\_\_\_\_

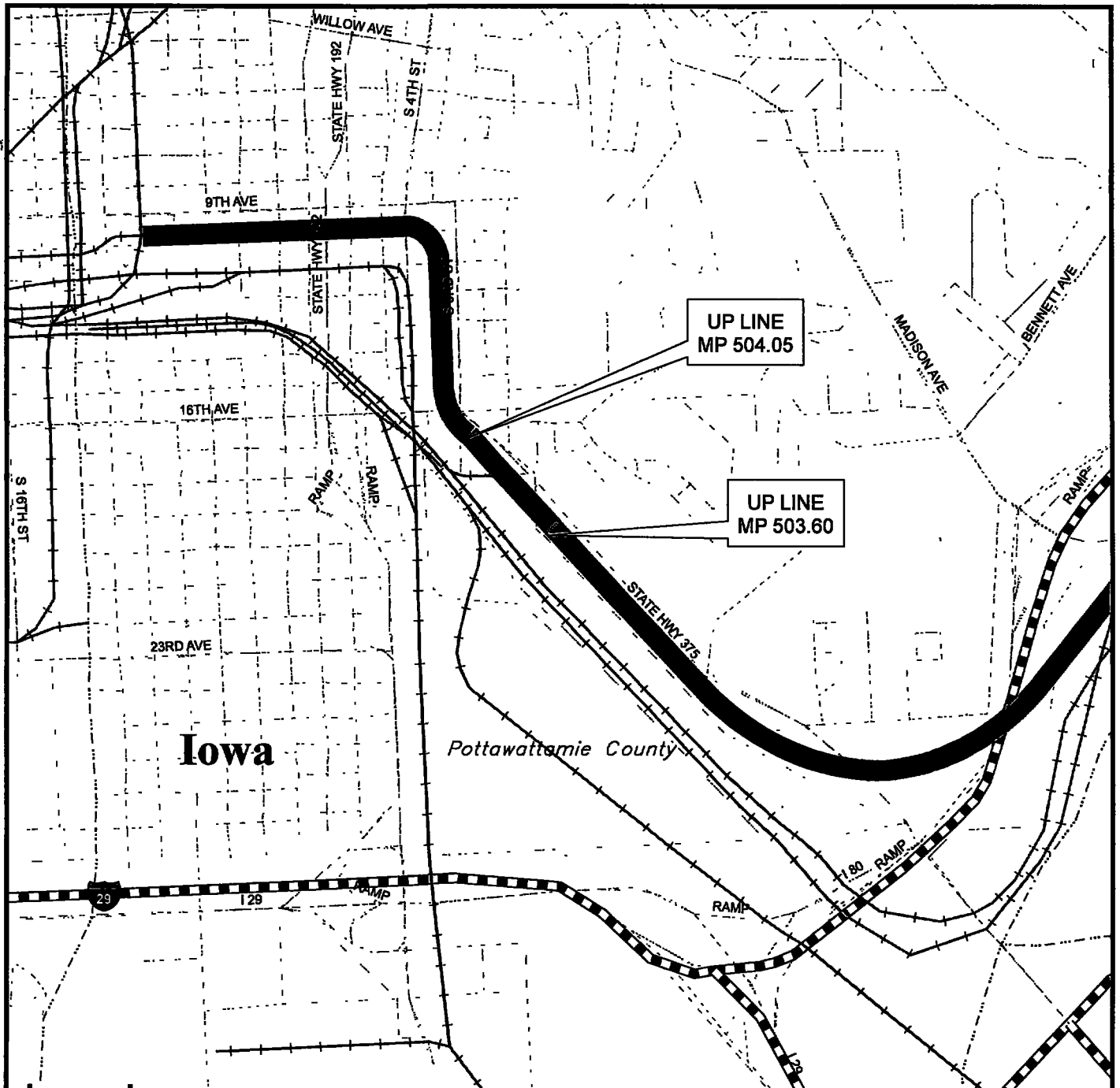
ATTEST:

Title \_\_\_\_\_




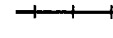

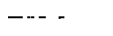
\_\_\_\_\_

Secretary





### Legend

-  UP LINE (IAIS TO ACQUIRE OPERATING RIGHTS AND COMMON CARRIER OBLIGATIONS)
-  ABANDONED IN 1971
-  ABANDONED IN 2000
-  OTHER RAILROADS
-  PRINCIPAL HIGHWAYS
-  OTHER ROADS

### PRIOR ABANDONMENTS

UP LINE -  
 MP 503.6 TO MP 504.05  
 TOTAL OF 0.45 MILES  
 IAIS LINE - MP 486.8 TO 488.0  
 TOTAL OF 1.2 MILES  
 IN POTTAWATTAMIE COUNTY, IOWA

UNION PACIFIC RAILROAD CO.





Lanny M. Van Daele  
Corporate Counsel

Ph: 319-298-5405  
Fax: 319-298-5456  
Email: lmvandaele@iaisrr.com

October 15, 2009

Gabe Meyer  
Assistant General Attorney  
Union Pacific Railroad  
Stop 1580  
1400 Douglas Street  
Omaha, NE 68179

Office of the President  
Brotherhood of Maintenance of Way  
Employees  
20300 Civic Center Dr., Ste. 320  
Southfield, MI 48076-4169

Office of the Executive Director  
Transportation Communication Union  
3 Research Place  
Rockville, MD 20850

Office of the President  
United Transportation Union  
14600 Detroit Ave.  
Cleveland, OH 44107-4250

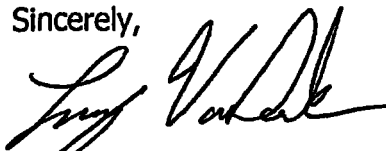
Office of the President  
Brotherhood of Locomotive Engineers  
and Trainmen  
1370 Ontario St.  
Cleveland, OH 44113

Office of the President  
Brotherhood of Railroad Signalman  
917 Shenandoah Shores Rd  
Front Royal, VA 22630

Dear Madam or Sir:

Due to a typo, please see the enclosed notice of employment to replace the previously sent notice involving the transaction currently pending with the Service Transportation Board (STB). Again, pursuant to 49 U.S.C. 10902 and 49 C.F.R. 1121.4, the Iowa Interstate Railroad, Ltd. is providing you notice of the transaction, docketed with the STB under No. 35220, by enclosing the notice of the intent to acquire rail lines and the possible employment with the Iowa Interstate Railroad, Ltd. Also, the enclosed notice will be provided to the Union Pacific for posting in the appropriate workplace for affected Union Pacific employees.

Sincerely,



Lanny M. Van Daele

**STB Finance Docket No. 35220**

**IOWA INTERSTATE RAILROAD, LTD.**

**NOTICE OF INTENT TO ACQUIRE RAIL LINES  
PURSUANT TO 49 U.S.C. 10902 AND 49 CFR 1121.4(h)**

Pursuant to Surface Transportation Board regulations at 49 CFR 1121.4(h), Iowa Interstate Railroad, Ltd. (IAIS), hereby offers notice to employees of Union Pacific Railroad Company (UP) that on or after October 14, 2009, IAIS proposes to acquire and operate upon, over, and across a permanent exclusive freight easement conveyed by the UPRR for IAIS to provide freight service upon the following lines of railroad (collectively, the Line), which UP will have no further obligation to operate:

UP's Great Western Industrial Lead from Milepost 503.6 to Milepost 504.05, a distance of 0.45 miles, and 2) an associated connecting track, which is approximately 900 feet long, and connects the UP Line to IAIS' Main Line. The total length of the Line is approximately 0.65 miles.

IAIS currently projects that it may hire the following employees to operate over the Line as needed:

1. Engineer(s) at an annual salary of approximately \$61,600.00 to \$65,000.00.
2. Trainmen at an annual salary of approximately \$61,600.00 to \$65,000.00.
3. Maintenance of way personnel at an annual salary of approximately \$44,263.00 to \$55,257.00.

IAIS will offer:

- Dental, medical, and disability plans
- Expense reimbursement
- Holidays
- Family and medical leave
- Jury duty
- Military leave
- 401(k) plan

IAIS will select any new employees on the basis of:

- Current certifications held
- Railroad job knowledge
- Skills and ability
- Previous work experience

Any UP employee interested in further information concerning positions available at IAIS should contact IAIS's Human Resources Department at (319) 298-5400.

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**CERTIFICATE OF SERVICE**

The undersigned parties hereby certify that as of this 19 day of October, 2009 the foregoing Notice of Intent to Acquire Rail Lines has been: 1) served upon the national offices of the labor unions with employees on the affected lines, and (2) posted at the workplaces of employees on the affected lines, as provided under 49 CFR 1121.4(h).

UNION PACIFIC RAILROAD COMPANY

Signed:

Title:

[Signature]  
SR Train Counsel

IOWA INTERSTATE RAILROAD, LTD.

Signed:

Title:

[Signature]  
Corporate Counsel  
Larry M. Van Dack

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